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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/189,819	11/10/1998	AYMAN FAWAZ	ODYS10004WSW	5932
7590	10/29/2004		EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN, LLP 12400 WILSHIRE BLVD. SEVENTH FLOOR LOS ANGELES, CA 90025			TRAN, PHUC H	
			ART UNIT	PAPER NUMBER
			2666	

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/189,819	FAWAZ ET AL. <i>(initials)</i>
	<b>Examiner</b>	<b>Art Unit</b>
	PHUC H TRAN	2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 10 June 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 5-8,10-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5-8,10-14 and 16-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5-8, 10-14 & 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan et al. (U.S. Patent No. 6324165 B1) in view of Smith et al. (U.S. Patent No. 6452905 B1).

- With respect to claims 5-7, 10-12, 14, & 16-21, Fan teaches a method for controlling congestion in a network (e.g. a large capacity ATM core switch architecture is disclosed in Fig. 2) having a plurality of switching points comprising:

maintaining a plurality of service level agreements at a first switching point (col. 3, lines 16-19), each SLA having a corresponding minimum data rate (col. 3, lines 35-37);

transmitting data packets received at the first switching point corresponding to each SLA at or above the minimum data rate in accordance with the respective SLA (col. 3, lines 14-25);

Fan fails to teach the SLA in the network, however Fan teaches the QoS in the ATM network (col. 2, lines 8-18) for qualify the transmission in the network. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to understand the QoS or SLA are for controlling the transmission in the communication based on the desire and negotiate between the source and destination.

Fan also fails to teach a receiving message from a second switching point at the first switching point to indicate that traffic between a source and a destination is congested; adjusting a data rate at which packets corresponding to an SLA, destined for the destination, are output from the first switching point in response to receiving the message to reduce the congestion. Smith teaches the congestion feedback to indicate the traffic between the source and the destination (Fig. 1 & 2) and adjusting the data rate (Fig. 4 & 6, col. 9, lines 30-35). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to implement the controlling traffic between the source and the destination in communication system by feedback the congestion to adjust the data rate for controlling and providing the service in communication.

- With respect to claims 8, & 13, Fan discloses wherein maintaining SLAs further comprises separating the data packets into different queues corresponding to each different SLA (e.g. blocks 32 in Fig. 3).

#### *Response to Arguments*

3. Applicant's arguments with respect to claims 5-8, 10-14, & 16-21 has been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form PTO-892.

Art Unit: 2666

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H TRAN whose telephone number is (703) 308-7471. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RAO SEEMA can be reached on (703) 308-5463. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9314.

Phuc Tran  
Assistant Examiner  
Art Unit 2664

P.t  
October 28, 2004



DANG TON  
PRIMARY EXAMINER